

CHIP

COMMUNITY HOUSING IMPROVEMENT PROGRAM, INC.

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RE: FCC 99-141

Please accept the following comments in connection with the Notice of Proposed Rulemaking FCC 99-141.

Community Housing Improvement Program, Inc. is a trade association of apartment building owners in New York City. Our members typically own freestanding buildings of 20 to 200 units, although some own smaller or larger buildings and some own apartment complexes of attached or architecturally related buildings. We have serious concerns with the physical, financial, and legal implications of the proposal.

We were struck particularly by the overview on access to buildings and rooftops where the Notice cites testimony on behalf of WinStar that building owners have "obstructed competing telecommunications carriers" by "requesting non-recurring fees, recurring fees..." etc (par. 31). In our experience, WinStar and other telecommunications carriers habitually charge non-recurring and recurring fees that obstruct consumers from using their services. More to the point, perhaps, is the statement at paragraph 33 that Section 224 was "intended to ensure that incumbent LECs will not be able to obstruct their potential competitors from offering service to customers." Property owners and other consumers are not mentioned. It is the LECs use of their own property that is and should be at issue.

Further, the argument that an LEC's access to a multifamily dwelling's roof, conduit, or riser is a right-of-way that must be offered other providers on a nondiscriminatory basis grossly oversimplifies the legal parallels. There are two likely situations. One is where a utility has effectively taken the right-of-way with a government franchise and compensation has been paid. The other is where the property owner has granted an easement or license for a fixed period for a rental fee. In the first instance, it would appear that opening access to other communications providers would reopen the whole issue of just compensation. Would the additional provider(s) pay more or less than the franchise operator? Would they pay both the property owner and the franchisee, or, if one, which one? Ironically, opening this right-of-way could increase the value of the property right taken from the building owner (who may previously have been barred from accepting

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competitive offers for use of the infrastructure), but could decrease the value to any single provider that, now, could not be assured of obtaining a significant market share. The competition for access to a small building with special demographics could be greater than for access to larger buildings with poorer tenants. Access to conduit might be less valuable in neighborhoods with major wireless providers and more valuable in other communities. Only the marketplace -- providers bidding for access -- can rationally price the myriad permutations that occur

Ultimately, the thrust of Congress's and the FCC's efforts to deregulate telecommunications and promote competition are inimical to government franchises and takings.

Along the same lines, opening up private contractual agreements between owners and providers for building access would be a new taking, creating all the just compensation issues that do not lend themselves to a one size fits all solution, as described above.

The fundamental question of whether contracts for exclusive access benefit the consumer and promote competition among providers is, of course, a core issue to be considered. CHIP believes strongly that the ability for property owners to sign exclusive agreements both benefits consumers and promotes competition. The initial infrastructure cost for cable or internet access, for example, would not be borne by telecommunications providers who knew they would then have to share it. The alternative, waiting for residential building owners to install their own infrastructures, will result in long delays in service to many properties. At the same time, exclusive contracts with one or two providers for a fixed period allow the property owner to oversee the quality and price of service provided to his or her tenants. It is very much in the owner's interest to make sure that the telecommunications customer -- who is also his customer -- is happy. The property owner can also demand service standards -- for example, contractually requiring a prompt answer to a call to the provider's telephone complaint line-- in a way no individual consumer could. In the franchise environment, by contrast, the consumer is stuck with the franchise provider and the property owner has no interest. In a world where anyone could trample over the owner's 'right-of-way' neither the owner nor the consumer has any real leverage to enforce standards. The ability of an individual consumer to choose another provider is a hollow promise where there are few providers and owners lack the ability to put together the elements to attract new ones.


The FCC walked a shaky constitutional line on access in connection with the Section 207 rules, permitting tenants in multiple dwellings to install satellite dishes in areas under their 'exclusive' control without allowing physical invasion of the property, i.e. permitting a tenant to clamp a dish antenna to a balcony rail, but not allowing them to drill into the rail for a mount or through an exterior wall for a wire. The courts may yet find this to be a physical or regulatory taking. But, the proposals regarding building access under Section 204 clearly cross the line.

For all the above reasons, we think that asking whether the FCC should or could adopt a national nondiscriminatory access requirement on building owners is the wrong question. We believe that the furtherance of competition among telecommunications providers and the consumers' interests dictate that local mandatory access laws be prohibited instead.

Finally, we think it is worth noting that the Commission's efforts to regulate in the area of building access is, to some degree, shooting at a moving target. It is not unlikely that both technological advances in broadband uses of existing wiring and advanced wireless technologies will largely moot this debate within a few years. Personal fixed wireless systems for telephone, television, and Internet communications that do not depend on roof antennas or conduit or risers are already feasible and may soon be competitive in cost with other services. Perversely, forced access to the multifamily market could discourage such innovations.

Thank you for the opportunity to comment.

Sincerely,



Dan Margulies